

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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Federal Communications Commission  
Office of Secretary

In the Matter of )

Broadband PCS "C" And )  
"F" Block Installment )  
Payment Issues )  
)  
)  
)WT Docket 97-82  
DA 97-679

Initial Comments  
of  
Airadigm Communications, Inc.

Airadigm Communications, Inc. ("Airadigm"), acting through counsel and in accordance with FCC Public Notice, DA 97-679, released June 2, 1997, hereby submits its initial comments in this matter.

**I. INTRODUCTION**

1. Airadigm is licensed to provide Broadband Personal Communications Services ("PCS") on both the C and F Blocks. Airadigm is the C Block licensee for most of the State of Wisconsin, where it is already providing service in several communities. It also holds C Block licenses in Eastern Iowa and F Block licenses in Iowa and Wisconsin.

2. Airadigm has been eligible for and has been following the installment payment plan currently available to C and F Block licensees under the Commission's rules. Airadigm has not sought any waiver of or exemption from the requirements of those rules. It is neither

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delinquent nor in default with respect to any of its obligations under the existing Commission installment payment structure.

3. Airadigm has reviewed the various proposals which were, in part, the impetus for the Commission's request for comments on installment payment issues, including the Petition For Rulemaking filed by Cook Inlet Region, Inc. ("Cook Inlet") and the letter proposal of MCI Communications, Inc. Airadigm is also familiar with other financial developments among C Block licensees that presumably further precipitated the Commission's suspension of installment payments and solicitation of comments.

## ***II. THE COMMISSION SHOULD ADOPT THE COOK INLET PROPOSAL***

4. From the start, the Commission's installment payment rules have been founded on a sensible and straightforward quid pro quo:

"A license granted to an eligible entity that elects installment payments shall be conditional upon the full and timely performance of the licensee's payment obligations under the installment payment plan."<sup>1/</sup>

5. The Commission recognized that if its auction rules were to have any credibility, the installment payment requirements had to be met, otherwise bidders might engage in speculative bidding with the expectation that they could be financially rescued by some form of regulatory relief. See, e.g., Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Fifth Memorandum Opinion and Order, 10 FCC Rcd 403, 460 (1994).

6. The Commission did build some flexibility into the current installment payment structure, including reasonable grace periods and other methods dealing with prospective

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<sup>1/</sup> 47 C.F.R. § 1.2110(e)(4).

defaults. See, Letter from William E. Kennard, Esquire and Michelle C. Farquhar, Esquire to Leonard J. Kennedy, Esquire and Richard S. Denning, Esquire, dated December 17, 1996 ("Kennard Letter"). In Airadigm's view, these existing rules provide a reasonable balance between holding participants to bids knowingly made and granting flexibility and relief in those situations where it is warranted.

7. Like Cook Inlet, Airadigm opposes individualized, ad hoc solutions to the problems of licensees who now do not have the financial wherewithal to back up their freely-made bids. As Cook Inlet observes, by example, "individualized grace waivers and grace periods are fundamentally unfair to those designated entities who have honored their obligations to the government." Cook Petition, at p. 7. Moreover, such episodic actions cost the government revenues and could produce legal challenges. Id., at pp. 7-8. Therefore, the Commission should only examine and reassess its existing rules in a generic rulemaking proceeding with the full benefit of public comment.

8. That having been said, Airadigm opposes relaxation of the existing Commission rules. To do so now, in midstream, will only foster the same excesses in future auctions. The Commission established a mechanism to address the problem of defaulting licensees. It has been employed once, to the government's overall benefit.<sup>2/</sup> Again, the Commission's existing regulatory framework strikes the appropriate equilibrium between ensuring responsible, competitive bidding and dealing with financial payment difficulties. See Kennard Letter, supra. The Commission cannot, and should not, become an insurer of business success.<sup>3/</sup> To do so is

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<sup>2/</sup> FCC Public Notice, "Entrepreneurs' C Block Reauction Closes", DA 96-1153, released July 17, 1996.

<sup>3/</sup> Remarks of Chairman Reed E. Hundt to Citizens For A Sound Economy, Washington, D.C., June 18, 1997, at p. 5 ("We don't guarantee success--only the opportunity to compete....")

unfair to those licensees who have played by the rules. It places the Commission in a position of favoring certain licensees over others, particularly when the Commission does so through individualized actions. It negatively affects the valuation of the licensees of those who must continue to meet the prescribed payment schedules.

9. Airadigm agrees with Cook Inlet that the record developed as part of a rulemaking would support the conclusion that "strict enforcement of competitive bidding installment payment obligations will help to foster competitive services more quickly and to maximize government revenues generated by completed auctions." For that reason, Airadigm also favors initiation of such a rulemaking.

10. In the meantime, the government should not be required to indefinitely help "fund" the operations of certain C Block licensees. As Cook Inlet urges, installment payments under the existing framework should resume, pending completion of the rulemaking.

***III. IN ANY CASE THE COMMISSION MUST  
APPLY THE RULES EVEN-HANDEDLY***

11. Whatever decision the Commission makes must be applied to all C and F Block licensees. The Commission cannot create two classes of licensees, with those who are financially sound forced to comply with the more stringent set of rules because of their prudence and business acumen.

12. To that end, the Commission should offer licensees who made timely payments prior to the suspension of the installment payments credit for the time value of their payments. It could be based on the interest rate on their installment payment and be applied as a credit against their principal owed. Licensees should also have the option of a full refund of any payments made that were due on the payment suspension date (i.e., March 31, 1997).

#### **IV. CONCLUSION**

13. The Commission's existing rules are sound. The Commission should not abandon them lightly. To do so now would be unfair to those who complied in good faith. The Cook Inlet approach should be adopted. Nevertheless, any adjustments to its installment payment note rules that the Commission does make must be applied across the board.

Respectfully submitted,

**AIRADIGM COMMUNICATIONS, INC.**

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